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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mrs. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

OCT 9 1992

MAIL BRANCH

ORIGINAL
FILE

Re: Normandy Broadcasting, et al
Glens Falls, New York
MM Docket 92-6, et al

Dear Ms. Searcy:

Enclosed for filing, on behalf of Normandy Broadcasting Corporation, are an original and six copies of Proposed Findings of Fact And Conclusions Of Law Of Normandy Broadcasting Corporation.

Please direct all responsive communications to the undersigned at:

Christopher P. Lynch
217 Dix Avenue
Glens Falls, New York 12801

Very truly yours,


Christopher P. Lynch

CPL/dc
Enclosures (10)

cc: All Parties On Attached
Certificate of Service, w/encl.

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Before the
Federal Communications Commission
Washington, D.C. 20554

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MM Docket No. 92-6

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	
)	
NORMANDY)	File No. BRH - 910129UR
BROADCASTING CORP.)	
)	
For Renewal of License of)	
Station WYLR(FM) (95.9 Mhz))	
Glens Falls, New York)	
)	
and)	
)	
LAWRENCE N. BRANDT)	File No. BPH - 910430MB
)	
For a Construction Permit for)	
a new FM Station on 95.9 Mhz)	
at Glens Falls, New York)	
)	
To: Administrative Law Judge		
Richard L. Sippel		

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF NORMANDY BROADCASTING CORPORATION

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OF NORMANDY BROADCASTING CORPORATION

I.

PRELIMINARY STATEMENT

The issues herein remaining to be disposed of are:

A. Whether WYLR's past broadcast record as augmented by its Proffer of Programming and sworn testimony herein shows it merits a renewal expectancy in this case.

B. What effects the findings in the Queensbury, N.Y. proceeding (MM Docket No. 90-181), have on Normandy's qualification to remain the licensee of WYLR-FM, Glens Falls, N.Y.

C. To determine which of the proposals would, on a comparative basis, best serve the public interest.

D. To determine, in light of the evidence adduced pursuant to the foregoing issues which, if either, of the applications should be granted.

II.

FINDINGS OF FACT

A. RENEWAL EXPECTANCY

1. Over the license period, WYLR broadcast News, Sports and Weather Programming on a consistent basis. (Proffer, Transcript)
2. Over the license period, WYLR consistently broadcast Public Service Announcements, both live and produced, to answer ascertained problems of its community. (Proffer, Transcript, pp 661-2, 673-9, 696-7)
3. On an irregular but consistent basis, WYLR broadcast Public Affairs Programming and/or Interviews, many times integrally as part of its fundraising or sponsorships of community based events. (Proffer, Transcript, pp 610-633, 682-694, 710-712)
4. That WYLR's non-entertainment programming averaged about 6% of its broadcasting time. (Proffer, Transcript, p 567)
5. That WYLR can point to numerous concrete examples of the positive effects of its Public Affairs Programming. (Proffer, Dir Case Exh 3,6,9,11)

B. EFFECTS OF QUEENSBURY

1. In the Hearing Designation Order this court framed the Issue "(b) If a final decision is rendered in the Queensbury, New York, proceeding (MM Docket No. 90-181) in which it is determined that Normandy lacks the basic qualifications to be a Commission permittee or licensee, to determine the effect(s) thereof on Normandy's basic qualifications to remain the licensee of Station WYLR(FM), Glens Falls, New York."
2. Brandt sought summary decision on this issue and in the Memorandum, Opinion and Order (released May 15, 1992) was turned down and Normandy was allowed to file both its Proffer and any other relevant exculpatory evidence.

3. Normandy has since dropped out of the Queensbury proceeding, so the final decision originally envisioned will not be rendered vis a vis Queensbury.
4. Normandy has filed a number of exhibits in the direct case aimed at mitigating the preliminary decisions which have not been challenged. (exhibit 7 and 8)
5. Throughout the proceeding, Brandt has not brought forth one witness or a shred of evidence to contradict Normandy's claim that the preliminary findings in Queensbury reflect innocent errors in interpretation of FCC Law or simple clerical errors.
6. There is more than adequate precedent in FCC Law, as will be argued in Normandy's Conclusion of Law, to allow this court to dispose of this issue in Normandy's favor.

C. WHICH PROPOSAL, ON A COMPARATIVE BASIS, WOULD BEST SERVE THE PUBLIC INTEREST

1. Lawrence N. Brandt proposes no integration into management whatsoever. (Brandt Integration Statement)
2. Christopher P. Lynch proposes 100% Integration. (Direct Case Exhibit 3)
3. Brandt has proposed no Program Service Criteria. (Brandt Integration Statement)
4. Lynch proposes continuing service to include enhanced Public Affairs Programming as provided over the past license period. (Direct Case Exhibit 3)
5. Brandt has no past broadcasting record, save acquiring broadcasting stock and selling same before the facility was on air. (Brandt Integration Statement)
6. Lynch reflects a 20 year broadcast record in the proposed community of license. (Direct Case Exhibit 3)
7. Brandt proposes no local residence or interest therein. (Brandt Integration Statement)
8. Lynch has resided in the local community (save approximately 3 years voluntary Army service in Germany and Viet Nam) since 1959. (Direct Case Exhibit 3)
9. Brandt has never participated in any local community

- civic affairs. (Brandt Integration Statement)
10. Lynch has extensive experience in civic organizations, dating back to his childhood. (Direct Case Exhibit 3)
 11. Brandt proffers no Broadcast Management experience whatsoever. (Brandt Integration Statement)
 12. Lynch has managed WWSC and WYLR-FM since 1971 as its President and General Manager. (Direct Case Exhibit 3)
 13. Brandt seeks no minority ownership enhancement. (Brandt Integration Statement)
 14. Lynch requests slight preference due to his status as a Viet Nam Veteran. (Direct Case Exhibit 3)

D. WHICH APPLICATION SHOULD BE GRANTED

1. We can only amplify the previously stated facts in issues A, B and C, which we will revisit in our Conclusion of Law.

III.

CONCLUSIONS OF LAW

A. PRELIMINARY STATEMENT

Normandy will establish it has earned presumption of renewal by its past programming, will further argue that the findings in Skidelsky, as mitigated or exculpated by these proceedings and as a matter of law, cannot suggest that Normandy will not well serve its community in the future, and that granting Normandy's application is correct looking at the comparative issues and the Law, and would best serve the interests of the Public that the FCC is mandated to serve.

B. RENEWAL EXPECTANCY

1. Through its Proffer of Programming and Direct Case (Exhibit 6, pp 1-22), Normandy has established that its programming on WYLR has consistently addressed the

ascertained problems of its community over the license period, and that its non-entertainment programming ran at a quantitative and qualitative level that well served the community and is consistent with FCC policy. Brandt was singularly unable to produce witnesses or testimony that refuted or attempted to refute any of Normandy's WYLR programming claims.

2. Further evidence of WYLR's civic programming is found in its Direct Case's exhibits 9 and 11, as reformed. Sworn affidavits attest to \$56,000 raised for Easter Seals (9/1), 20 years of support for the March of Dimes (9/6), Lynch's (WYLR's) 20 years of support of the local Cerebral Palsy Center (9/9), WYLR's fight against substance abuse (9/10), support of volunteerism (9/13) and support of the poor, of the sick and of needy children (9/4 & 5, 9/17 & 18, 9/7 & 8).
3. Lynch's and WYLR's constant support of the community is further attested to in its Direct Case exhibits 3 and 11, reflecting awards, sworn affidavits, letters and testimonials received over the license period, as well as the long term involvement of Lynch and WYLR in the communities civic affairs and groups.
4. Further support for awarding Normandy renewal expectancy for WYLR comes from the hearing itself. The sworn testimony of Christopher P. Lynch, Thomas Jacobsen and Richard Dusenbery only amplify the accomplishments of WYLR over the license period. Despite Brandt's best efforts, not one word contradicted Normandy's claims. Brandt could not offer one witness or document to refute Normandy's statements.
5. Thus, having failed utterly to refute Normandy's claim to its right of renewal expectancy, Brandt allows this Court to properly award Normandy the WYLR renewal expectancy it earned throughout the license period.

C. EFFECTS OF QUEENSBURY

1. Normandy argues that Brandt has abjectly failed to

- show that the decisions in Skidelsky should reflect in this proceeding in any manner whatsoever.
2. Brandt was afforded discovery and he could not come up with one witness to even suggest Normandy's errors were more than innocent errors, as Normandy has sworn to throughout. It must be assumed that Brandt, even with the help of Mr. Tilotsen's other Queensbury client, Bradmark Broadcasting, could not find one party to speak against Normandy.
 3. Scott and Davis Enterprises, 88 FCC 2d 1090, 1099 (Rev. Bd. 1982), places the burden on Brandt to show Normandy's actions were serious misconduct, not just inadvertance, and Brandt did not even try.
 4. It is well established that motive or intent to deceive is a mandatory element of misrepresentation (Armando Garcia, 3 FCC Rcd 1065, 1067 (Rev. Bd. 1988); Fox River Broadcasting, Inc., 88 FCC 2d 1132, 1137 (Rev. Bd. 1982), modified, 93 FCC 2d 127 (1983). Brandt again fails to even attempt to meet this burden.
 5. As the frontrunner at the time the Queensbury Hearing Designation Order was issued on the basis of the FCC Policy Statement concerning Comparative Broadcast Hearings, 1 FCC 2d 393, 5RR 2nd 1 501 (1965), Normandy submits its only motive was to be forthright and honest throughout the entire Queensbury proceeding.
 6. Moreover for Brandt to prevail in this case, the Commission has required Brandt to prove "intentional misrepresentation" while it directs this court to take into account "the willfullness of the misconduct, the frequency of such behavior, the seriousness of the misconduct (and) the applicant's record of compliance with our rules and policies, if any", Professional Radio, Inc., 2 FCC Rcd 6666 (Comm'n 1987). Again Brandt has failed to meet this burden; he has not even tried, while Normandy enjoys a clean record from 1959, Lynch from 1971.
 7. There is ample evidence on record of Normandy's efforts to ensure these types of inadvertent errors do not happen in the future (Direct Case exhibit 7 and 8,

transcript p 613, 579, 593-7) said evidence serving to further mitigate the findings in the Queensbury case.

8. Moreover, Normandy submits that the alleged misconducts in Skidelsky have no bearing on the operations of WYLR. In Faulkner Radio, Inc., 88 FCC 2d 612 (1981), the FCC's principal concern is with "misconduct disclosing a pervasive unwillingness or inability to meet the basic responsibilities of a licensee.... We have considered misconduct of a more limited nature a factor in not absolutely disqualifying licensees", 86 FCC 2nd at 616. Although this is not decisive in and of itself, as found in WIOO, Inc. (95 FCC 2nd 76, 1983), "The lost opportunity to acquire an FM station....constituted a significant deterrant to the repetition of such misconduct....under these circumstances we are reasonably assured that WIOO can be relied upon....as an FCC licensee".
9. Normandy submits WIOO, Inc. is entirely on point. Even if the findings of Skidelsky are not mitigated as yet; Even if somehow the Court finds intent; the loss and misery visited upon Normandy, its employees and Mr. Lynch and his family represent a deterrant that will insure the FCC's right to rely upon Mr. Lynch as an upstanding licensee for decades to come.

D. WHICH PROPOSAL, ON A COMPARATIVE BASIS, WOULD BEST SERVE THE PUBLIC INTEREST

1. Based upon the FCC comparative criteria and the facts on record in this case, Normandy submits as either as a matter of law or of common sense this Court must find that the granting of Normandy's application would best serve the interests of the public in Queensbury, N.Y., and the entire service area of WYLR-FM in light of the evidence adduced pursuant to the forgoing issues.

E. WHICH OF THE APPLICATIONS SHOULD BE GRANTED

1. Normandy has shown that WYLR's programming is anything but substandard, and Brandt has failed to counter any of Normandy's programming claims. Normandy has over met the criteria needed to be awarded renewal expectancy.
2. Normandy dwarfs Brandt in all comparative aspects as detailed under the FCC's own standards for Comparative Hearings, most significantly in integration, residence and civic activities.
3. The findings in Queensbury are of minor importance comparatively, as Brandt has not even attempted to show any intent or motive on Normandy's part, as needed to diminish Normandy's superior integration.
4. The award here must be made to Normandy, a 100% integrated applicant, a local resident for 30 years and a local operator for the last 20 years and the foreseeable future.

Respectfully submitted,



Christopher P. Lynch, President & General Manager
Normandy Broadcasting Corp.

October 6, 1992

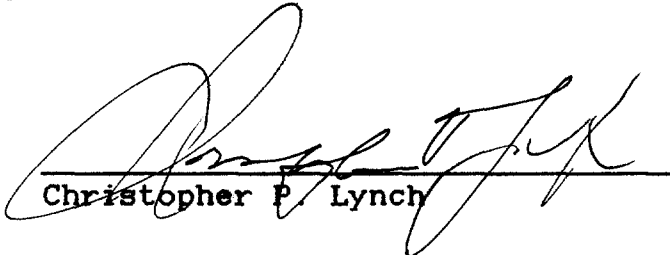
CERTIFICATE OF SERVICE

I, Christopher P. Lynch, hereby certify that on October 7, 1992, I have caused a copy of the foregoing document to be served by U.S. mail with first class postage prepaid upon the following:

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Christopher P. Lynch